

# COVID 19 – know your rights

## Guidance for disabled members and those with underlying health conditions

### COVID 19 and disabled people

We know that disabled people are more vulnerable to COVID-19 than non-disabled people.

The government acknowledges this and has produced guidance for workers with underlying health conditions who are “extremely clinically vulnerable” to COVID 19. These workers were previously asked to “shield”.

Although the government has made some changes to its shielding guidance, it is still advising that all workers should work from home if possible. The general advice on working from home applies equally to all disabled workers and is emphasised for extremely vulnerable or shielded workers who should take extra precautions to stay safe.

But what does this mean in practice for you and your job? Employers have a particular duty to look after the safety of their disabled staff during the current crisis and this guide outlines your rights at work.

#### Do I have to go to work?

There is separate government guidance for those that are “extremely vulnerable”:

##### ➤ Government guidance for extremely vulnerable and shielding people

#### Extremely vulnerable group

If you are in the extremely vulnerable (“shielded”) category then you should work from home if possible.

If your job can’t be done from home then your employer should look at whether they can temporarily redeploy you to a job that can be done at home.

If this isn’t possible either, then the next step is to consider other options that will keep you safe. Best practice is to allow previously shielded staff to stay at home on special paid leave for the duration of the pandemic. Employers can also continue to furlough shielded staff. However, while an employer may have decided to put a shielding employee on furlough, it must not subject anyone with a protected characteristic (such as disability) to unlawful discrimination. Shielding individuals are likely to be ‘disabled’ for the purpose of rights under the Equality Act 2010.

If your employer won’t allow special paid leave or furlough then they should undertake an individual risk assessment before any return to the workplace. They should carefully consider whether your return to the workplace constitutes an acceptable level of risk. UNISON’s position is that employers should allow formerly shielding workers to stay at home on full pay until at least 21 June if working from home is not possible.

#### The Equality Act 2010

Whether you are in the “extremely vulnerable” category or not, if you are a disabled worker as defined by the Equality Act 2010 then you have additional rights that are particularly important at this time. The Equality Act defines a disabled person as someone who has a mental or physical impairment which has lasted, or is likely to last, 12 months or more. Disabled people have the right not to be directly or indirectly discriminated against in employment. You also have the right to reasonable adjustments if you experience disadvantage at work.

Disabled people face a disadvantage at work as they are more vulnerable to COVID-19. Working from home may therefore be a reasonable adjustment for these staff. If your employer is unwilling to accept this then please speak to your UNISON rep.

## What if I'm disabled but not in the "extremely vulnerable" group?

The government advice is still that all workers should work from home if possible. If this is not possible then your employer should go through the same steps in assessing how they can help keep you safe as they would with an extremely vulnerable or "shielded" worker. They should start with checking if you can be re-deployed so you can work from home and if this isn't possible they should look at special paid leave or furlough. UNISON believes this should be on full pay and the employer must be careful not to make decisions that might be discriminatory.

Refusal of home working or redeployment for a disabled person, or for example a pregnant person, may amount to unlawful discrimination under the Equality Act.

In recognition of the unprecedented scale of the COVID-19 pandemic, employers should discount any COVID-19 absence from triggers for action specified in any attendance management, disciplinary, redundancy or capability policy. This includes if a member is diagnosed as having "Long COVID". Contact your UNISON rep if your employer is treating you unfairly due to COVID related sickness absence.

- [Guidance from NHS England on Long COVID is available here.](#)

## What if I have to go to work?

If you are an extremely vulnerable or "shielded" worker then UNISON believes you should not be going to work. Contact your UNISON steward if your employer is asking you to return to work before you feel safe.

If you are disabled and your employer has gone through all of the steps above but still says you need to come to work, then they need to do an individual risk assessment of the risks you face as a vulnerable or disabled worker.

## Risk assessments

All employers must do an overall risk assessment of the workplace but they should do an individual risk assessment for each vulnerable or disabled staff member. The risk assessment should cover the following:

- do you come into contact with other people at work?
- does your job allow you to maintain two meters social distance from colleagues and members of the public? Note that this is current guidance, but that this distancing requirement may change.

- Do you have any reasonable adjustments that need to be taken into account? It is also best practice to include how you travel to work.

## Acting on the risk assessment

The employer must then look at how to remove or reduce the risks that have been identified. This could include some or most of the following:

- organising your workload to allow you to work from home as much as possible
- redeploying you to the safest available on-site role, enabling you to stay two metres away from others
- reducing your shift lengths so you have less interaction with other people
- providing you with additional personal protective equipment (PPE)
- staggering your start time so you travel when public transport is less busy.

If you have to spend time within two metres of others, your employer should carefully assess whether this involves an acceptable level of risk.

## What if I need PPE?

You may need to wear PPE. This depends on what you do, where, and with who you work. You are more likely to require PPE if you are providing direct care to service users, or cleaning premises contaminated by COVID-19. However there may be other circumstances especially if you have an underlying health condition or are disabled or when social distancing and other measures are not possible. Most PPE is made for non-disabled people. It may also not distinguish physical differences due to sex. If you feel an item of PPE does not fit you properly or cannot be used as it was intended then please raise this with your local UNISON rep as it may be something that contravenes the Equality Act 2010.

## What if I'm also vulnerable to COVID-19 for other reasons?

It's become clear that Black, Asian or Minority Ethnic (described here as "Black") people are more vulnerable to COVID-19 than white people. Men are also more vulnerable than women and the risk increases the older people are, and the larger their BMI. Where you live, the number of people in your household and deprivation are also factors that will affect your risk.

When your employer is assessing your risk, they should also include the additional risk you face, for example due to being Black, being older or being male. Note that the impact on a protected characteristic (eg racial grounds, sex, age) will be relevant for potential rights under the Equality Act 2010,

### **What if I live with someone who was "shielding"?**

If you live with someone who was shielding then, like all workers, you should continue to work from home if you can. Your employer should pay particular attention to your risk, which should be individually assessed and steps taken to reduce the risk. People in this group can be selected for furlough but it is likely to involve some legal risk due to rights under the Equality Act 2010. The employer must be careful not to make decisions that might amount to discrimination by association.

### **What if I don't feel safe at work?**

UNISON believes that our members should never be in a situation where they might endanger themselves and others in the course of doing their jobs.

Putting you in that situation is potentially a breach of health and safety law and may also spread coronavirus to others. It may also amount to unlawful discrimination.

As a last resort, when faced with a dangerous working environment which cannot reasonably be averted, every employee has the right not to suffer detriment if they leave, or refuse to attend their place of work (or take other appropriate steps) in circumstances where they reasonably believe there is a risk of being exposed to serious and imminent danger (section 44 of the Employment Rights Act 1996).

Although this is very much a right of last resort, the context of a situation will be key to whether refusing to return to work or any other steps are appropriate. This means that an employee cannot automatically refuse a reasonable instruction to return to work without a good reason.

If you feel you are being put at risk it is crucial to get advice and discuss the situation with your UNISON representative. **Contact your branch** and if needed you can seek advice from our regional office or **legal team**.

### **Extremely vulnerable or "shielding" workers**

People who are "extremely vulnerable" to COVID-19 include those who are having certain cancer treatments or have bone or blood marrow cancer, have a severe lung condition or a condition that makes you much more likely to get infections, have a weakened immune system due to medication, have had an organ transplant or are both pregnant and have a serious heart condition.

If you are in this group you should have received a letter from the NHS with advice on "shielding" which is a way of protecting very vulnerable people from the virus. Anyone in this category was previously advised to stay home at all times. Government advice has changed but you are still advised to work from home if possible and to take extra precautions to keep yourself safe. Note that you are almost certainly a 'disabled person' for the purposes of rights available under the Equality Act 2010 however, seek advice if you are unsure.